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November 26, 1997

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Ms. Salas:

Re: In the Matter of Preemption of State and Local Zoning and Land Use  
Restrictions on the Siting, Placement and Construction of Broadcast Station  
Transmission Facilities  
MM Docket No. 97-182  
Comments of the North Suburban Cable Communications Commission,  
a Municipal Joint Powers Consortium Consisting of the Cities of  
Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View,  
New Brighton, North Oaks, Roseville, St. Anthony, and Shoreview

On behalf of the North Suburban Cable Communications Commission ("NSCCC"), I am hereby filing the following reply comments in the proceeding identified above. I am filing herewith nine (9) copies of these reply comments.

The National Association of Broadcasters ("NAB") and the Association for Maximum Service Television (collectively "Petitioners") have jointly filed a "Petition for Further Notice of Proposed Rule Making" requesting that the FCC adopt rules to preempt certain state and local zoning and land use ordinances which allegedly present an obstacle to the rapid implementation of digital television ("DTV") service.<sup>1</sup> This proposed rule is substantially embodied in the Notice of

<sup>1</sup> The Petition was filed in the FCC's Digital Television proceeding Fifth Report and Order in MM Docket No. 87-268, FCC 97-116 (April 22, 1997) ("Fifth Report and Order"), 62 F.R. 26996 (May 16, 1997). The FCC has indicated that it will treat the Petition as one requesting a new rule making proceeding.

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Proposed Rule Making, released August 19, 1997, in the above-referenced proceeding ("NPRM"). The Petitioners have asked the FCC to adopt a rule that would permit the FCC to preempt state and local zoning and other land use regulations to the extent these regulations "unreasonably" prohibit or delay the construction of DTV facilities. In addition, the Petitioners request that the FCC impose specific time limits (between 21 and 45 days) for state and local government bodies to respond to requests for approval of the placement, construction or modification of broadcast transmission facilities. Pursuant to the proposed rule, if such local authorities do not act within the prescribed time limits, the requests would be deemed granted. Finally, the proposed rule would prevent local authorities from considering certain types of restrictions with respect to a broad array of transmission facilities.

The NSCCC files these reply comments in support of the Comments of the National League of Cities and the National Association of Telecommunications Officers and Advisors, the Comments of the City of Chicago, and the Comments of the City of Columbus, Ohio (collectively "Comments"). The NSCCC notes that the obvious conclusion established in the Comments that the FCC cannot and should not adopt the rule proposed in the NPRM is also consistent with the LSGAC's Advisory Recommendation No. 8 as well as the legislation recently proposed by Senator Leahy from Vermont (S.1350), both of which support continuance of local zoning and police power authority with respect to siting and construction of telecommunication towers. In short, the exigencies associated with rollout of DTV requiring the construction of very large transmission facilities presents neither a valid legal nor policy basis for the federal government to preempt local land use controls. Quite to the contrary, the rapid deployment of very large and potentially dangerous facilities, whether for DTV or to meet some other market demand, raises unique public health, safety, and welfare concerns which must be dealt with, in large part, locally.

While the NSCCC supports the timely rollout of DTV and will encourage its Member Cities to swiftly and clearly address issues related to transmission facilities construction and permitting/zoning requests related thereto, the NSCCC will oppose and/or fully support opposition to any attempts (albeit unconstitutional) by the FCC to preempt local authority over these matters.

It is instructive to note that the NAB has made a knee-jerk reaction to the desire to rollout DTV by seeking to broadly preempt local authority rather than focusing on discussions with the Local State Government Advisory Committee ("LSGAC"), beginning discussions with local

governments regarding ways to expedite requests for construction of DTV facilities, beginning to locate sites for construction of DTV facilities, and/or identifying competent contractors capable of constructing DTV facilities. The NSCCC suggests that the Petitioners are seeking to create and emphasize confusion and concerns about DTV rollout timelines in order to encourage broad federal involvement in primarily local zoning and public health, safety, and welfare matters.

In addition, the NSCCC strongly supports the fact clearly stated in the Comments that on their face, timelines of between 21 and 45 days are unworkable based on potential scheduling limitations and notice requirements. In many cases, more than 21 days pass between meetings of the NSCCC's member cities' councils or relevant committees thereof. For this reason alone, the proposed rule must be rejected. In fact, should the rule proposed in the NPRM be adopted, the NSCCC's Member Cities may be forced to presumptively deny all siting requests to allow more time for review and adequate consideration.

The mandatory deadlines proposed in the Rule, together with the "deemed granted" effect of a local government's failure to act within those proposed national deadlines, would effectively mean that local governments, and the citizens seeking to participate in the activities of local government, will be denied the opportunity to consider, discuss, and act upon requests related to transmission facilities. The FCC should take notice that this proposed rule unconstitutionally eviscerates the rights and obligations of both local governments and the citizenry pursuant to Minnesota state law and, presumably, the laws of all or substantially all of the other states in these United States.

Finally, the NSCCC supports the clear conclusion reached in the Comments that:

"undisputed facts point to but one conclusion: there are serious public safety concerns posed by a 'crash program' to construct tall towers with an admitted shortage of experienced crews."

For the FCC to broadly preempt and limit local police power authority to licensees seeking to rapidly construct enormous towers using potentially inexperienced contractors would not only be unconstitutional but also irresponsible, unprecedented and truly dangerous to people that live, work and play in local communities throughout the country.

The FCC must abandon the rules proposed in the NPRM.

Respectively submitted,

BERNICK AND LIFSON, P.A.



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